IN THE HIGH COURT OF CHHATTISGARH AT BILASPUR.

WRIT PETITION NO. 1265 OF 2004

PETITIONER : TARACHAND AGRAWAL S/O SHRI NANDKISHORE AGRAWAL, AGED ABOUT 60 YEARS, R/O AMAKHERWA ROAD MANENDRAGARH, DISTRICT KOREA, (C.G.).

VERSUS

RESPONDENTS :

1. STATE OF CHHATTISGARH, THROUGH: THE SECRETARY, DEPARTMENT OF HOME AFFAIRS, D.K.S. BHAWAN, RAIPUR, (C.G.).
2. THE SUPERINTENDENT OF POLICE, DISTRICT KOREA, (C.G.)
3. THE STATION HOUSE OFFICER, POLICE STATION MANENDRAGARH DISTRICT KOREA, (C.G.)
4. PRABHUDAYAL MITTAL S/O SHRI BANSHIDHAR MITTAL, AGED ABOUT 68 YEARS, PROPERITER PRABHUDAYAL CHANDRAPRAKASH MITTAL, R/O BADI BAZAR CHIRMIRI POLICE STATION CHIRMIRI TAHSIL MANENDRAGARH, DISTRICT KOREA, (C.G.).

P. R. No. 1265/04
Presented by Shri V.K.Shukla
dated 01.05.04

शपथ आयुक्त
ए.के. शुक्ला
बिलासपुर (छ.ग.)
30/4/04
बिलासपुर तहसील छोड़

RECEIVED COPY
1-5-04
Clerk to A. G. Bilaspur

WRIT PETITION UNDER ARTICLE 226/227 OF THE CONSTITUTION OF INDIA FOR ISSUANCE OF AN APPROPRIATE WRIT IN THE NATURE OF MANDAMUS/CERTIORARI ETC. OR DIRECTION/ORDER IN THE LIKE NATURE ETC.

(39)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक WP 1265/04 **सन् 200**

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश
	8.2.2005 Shri Yogendra Chaturvedi, counsel for the petitioner. Shri P. Das, Panel Lawyer for the State. Heard. By this petition under Article 226/227 of the Constitution of India the petitioner seeks the quashment of criminal proceedings instituted against him for commission of the offence under Section 138 of the Negotiable Instruments Act, 1881. Brief facts leading to filing of this petition are that respondent No.4 filed a complaint in the Court Judicial Magistrate First Class, Manendragarh for commission of offence under Section 138 of Negotiable Instruments Act & Section 420 of IPC, which came to be registered as Criminal Case No.630/03. The complaint was instituted with the allegations that the petitioner herein was in need of money for his business purpose, therefore, he took Rs.1,50,000/- on 6.5.2003 from respondent No.4 and in token thereof petitioner herein issued a cheque bearing No.413474 to be drawn on Punjab National Bank, Manendragarh on 16.9.2003. Thereafter, again on 16.5.2003 Rs.75,000/-, on 4.6.2003 Rs.50,000/- & on 30.6.2003 Rs.1,11,000/- petitioner took loan in connection with the business from respondent No.4 and	

Gr. PRJ—FS/350—12/2000—50,000.

(40)

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक ..... CR 1260/04 ..... **सन्** 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

petitioner issued post dated cheques bearing No.4143475 for Rs.70,000/- dated 10.5.03, No.413476 for Rs.50,000/- dated 16.8.03 & No.4143477 for Rs.1,11,000/- dated 16.8.2003 and assured that by presenting these cheques after 16.8.2003 respondent No.4 can draw the amount. On 18.8.2003 respondent No.4 presented the said cheques in Central Bank of India for collection and Central Bank of India sent those cheques to petitioner's bank i.e. Punjab National Bank, Manendragarh for encashment. The bank of the petitioner informed the respondent No.4's bank that petitioner has closed his account and returned the said cheques unpaid. Accordingly, respondent No.4 filed the complaint for commission of offence under Section 420 of IPC and Section 138 of Negotiable Instruments Act.

Learned counsel for the petitioner submits that so far cognizance has not been taken on the complaint. He further submits that the petitioner herein and respondent No.4 are relatives, the petitioner used to purchase wood from respondent No.4 and in that process he gave the blank cheques to respondent No.4 in the year 1997-98. But, same have been misused by respondent No.4 and on coming to know about the filing of the complaint the petitioner had lodged a FIR in the Police Station Manendragarh for commission of offence under Sections

Gr. PRJ—FS/350—12/2000—50,000.

उच्च न्यायालय, छत्तीसगढ़, बिलासपुर

मामला क्रमांक ..... 1/2126/04 **सन्** 200

आदेश पत्रक (पूर्वानुबद्ध)

आदेश का दिनांक तथा आदेश क्रमांक	हस्ताक्षर सहित आदेश	कार्यालयीन मामलों में डिप्टी रजिस्ट्रार के अंतिम आदेश

209, 406, 467, 468 & 471 of IPC regarding the fraud and cheating committed by respondent No.4 herein, but the police has not taken any action.

In the circumstances, whether the cheques in question were issued in the year 1997-98 or in the year 2003 as alleged by respondent No.4 herein is a question of evidence and finding can be given on that aspect only after recording of evidence by the trial court. Therefore, at this stage the petitioner has not been able to make out a case for quashment of the complaint.

With the aforesaid, the petition is dismissed.

Consequently, M.(W)P. No.1135/04 also stands disposed of.

Sd/-
L.C. Bhadoo
Judge